



Education Relations Commission

Annual Report

1988-89



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Education
Relations
Commission

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The Members of the Legislative Assembly
Province of Ontario

Dear Members:

I have the honour to present the Fourteenth Annual Report of the Education Relations Commission, which covers the period from September 1, 1988, to August 31, 1989.

Katherine E. Swinton
Chair
Education Relations Commission
August 31, 1989

STATUS OF THE NEGOTIATION PROCESS

The 1988–89 negotiations conducted in compliance with the School Boards and Teachers Collective Negotiations Act indicate that the teacher/school board bargaining process continues to be in a very healthy state. The parties were able to conclude agreements on an amicable basis, generally without third-party assistance and, in comparison with other public-sector negotiations, in a reasonable period of time.

During the 1988–89 reporting year, 161 negotiations were undertaken, and sanctions occurred in 2 instances (1.2 per cent). This record compares very favourably with those of other sectors in Canada and with those of previous reporting years under the act.

Two strikes occurred, a one-day strike of secondary school teachers in the Durham Board of Education, and a forty-one day strike by the branch affiliates of the Ontario English Catholic Teachers' Association and of l'Association des enseignantes et enseignants franco-ontariens, in the Kirkland Lake District Roman Catholic Separate School Board. While the Education Relations Commission monitored the situation in the latter negotiations, it did not issue a jeopardy advisement to the Lieutenant Governor-in-Council because it did not appear, in the opinion of the commission, that the continuation of the strike was jeopardizing the successful completion of the students' courses of study. In each case, the board and teachers were able to reach agreements locally with assistance from a commission-appointed mediator.

Of 161 negotiating jurisdictions, 103 (64 per cent) reached a settlement without any form of third-party assistance. This percentage of unassisted settlements is the highest since the passage of the act in 1975, excluding those years during which bargaining was restricted by restraint programs. Consequently, during 1988–89 the need to appoint third parties was reduced.

A total of 49 fact-finding appointments was made, equal to the lowest number in any year reported under the act. A total of 34 mediation appointments was processed.

In sum, the statistical record of third-party assistance during 1988–89 indicates that local parties were able to work within the process, independent of outside intervention, to address and resolve those issues placed on the bargaining table.

The average length of time taken to reach an agreement was 6.5 months. One of the criticisms frequently made of the act is that it prevents quick settlements and contributes to delays and protracted negotiations. The 6.5-month average is the lowest in the legislation's history and is lower than that for Ontario's public sector in general; since the average includes the July-August period, a traditional non-negotiation time, it is a significant achievement. In addition, of the 161 situations negotiated, 81 (50 per cent) concluded a two-year agreement and 11 (6.8 per cent) settled for a three-year term. In other words, 1988–89 was a very good year.

TEACHER STRIKES

As noted above, there were two strikes during the 1988–89 reporting year. This figure is well below the average number of strikes per year in past experience. The number and length of the negotiations that were settled *without* sanctions compare very favourably with those settled in both the public and the private sectors in Canada. The comments made in last year's report are worth repeating.

While strikes are an unhappy experience for all concerned, labour-relations experts have noted that, in order to have effective negotiation and labour-relations systems, the option of exercising the right to strike or lock-out to break negotiation impasses must be guaranteed. To serve this end, the sanction option must be a meaningful one, not subject to premature government intervention.

One of the purposes of the School Boards and Teachers Collective Negotiations Act is the furthering of harmonious relations between boards and teachers. Therefore, in order to ensure that this statutory purpose is met, the commission believes that the responsibility for reaching resolution during a strike rests with the local parties. While the ERC will supply its best mediators to such situations and must carefully consider the impact of the strike on the students' courses of study, the commission has consistently resisted premature intervention under clause 60(1)(h). During the past ten years, the commission has advised on jeopardy in just three cases. . . .

The longest total withdrawal of services by teachers occurred in Sudbury in 1979, when a strike by secondary school teachers lasted almost three months. While this unfortunate example is often cited in arguments against lengthy sanctions, it is not a representative case. Since the School Boards and Teachers Collective Negotiations Act became executive, there have been 2398 sets of negotiations. Sanctions have been exercised in only 2 per cent of these negotiations, and in only 1 per cent of cases have teacher strikes (i.e., a total withdrawal of services) exceeded one month's duration.

Also, it is worth noting that parties who undergo a long strike rarely exercise this option again. On the contrary, in such cases the teacher/school board relationship generally improves because the parties have jointly worked out the terms of their agreement and have learned important lessons from doing so.

Most importantly, on those rare occasions when strikes do occur, it becomes clear to all parties negotiating under Bill 100 that the responsibility for managing negotiations and maintaining harmonious relations rests with them and is not transferrable to other institutions. As noted, the ERC has endeavoured to ensure that local parties understand that they must resolve their own disputes. . . .

The healthy state of the bargaining process under Bill 100 is, at least in part, the result of the commission's allowing lengthy sanctions to occur. The commission has followed this policy, not in the expectation or hope that such sanctions will be exercised but, on the contrary, in the belief that the option for sanction reduces their likelihood and ensures that bona fide negotiation takes place. Where sanctions are adopted, the commission offers its services to the negotiating parties, and recruits and appoints competent third parties, where requested. For example, during the 1988–89 reporting year, the commission continued to offer, and make improvements in, a preventive-mediation program designed to instil more positive attitudes in negotiating parties and improve teacher/school board relationships. The commission's policy, then, emphasizes local responsibility in dispute resolution, but offers third-party service to facilitate such resolution.

PERSONNEL CHANGES

Mr. Robert H. Field, Chief Executive Officer for the commission since 1981, retired at the end of October 1988. He was replaced by Mr. Robert E. Saunders, who had been the Chief Executive Officer of the Planning and Implementation Commission and who brings to the ERC broad experience and knowledge of teacher/school board relations, negotiations, and Bill 100.

Ms. Sandra de Laurentiis, now the mother of a handsome new son, was replaced during her maternity leave by Marion Gassenauer, on secondment from the Ministry of Labour. The commission was pleased that Ms. Gassenauer was able to assist the commission during the six-month period ending August 31, 1989.

I THE COMMISSION

The Education Relations Commission is composed of five members appointed by the Lieutenant Governor-in-Council, and each member is eligible for reappointment upon the expiration of term.

Mrs. Katherine E. Swinton was appointed as Chair on November 1, 1987. Mr. David Allan Hayes was appointed Vice-Chair on May 11, 1988. Mrs. Trèva Legault Cousineau was appointed commissioner on May 11, 1988. Messrs. John McNeil and John Zeiler were reappointed on March 6, 1989. (A biographical sketch of each commissioner is provided in Appendix A.)

The commission has a permanent 17-member staff. In order to oversee bargaining in the more than 265 sets of negotiations that fall under its jurisdiction, the commission must supplement permanent staff with external human resources. The commission utilizes a cadre of more than 70 individuals appointed on a contractual basis as third-party neutrals. This arrangement has allowed the commission to have access to some of the most able third parties in the province.

All appointments and all major decisions and determinations are made by the commission; however, the day-to-day operations of the commission are managed by the chief executive officer. The operations of the ERC are divided into two major functions – Field Services and Information Services (an organizational chart is provided in figure 1). Briefly, the role of Field Services is to monitor negotiation activity at the local level, while that of Information Services is to provide data to all parties involved in negotiation.

The extensive experience of its permanent staff, as well as the highly qualified external human resources available to the commission, have enabled the ERC to respond quickly and effectively to the needs of the negotiating parties.

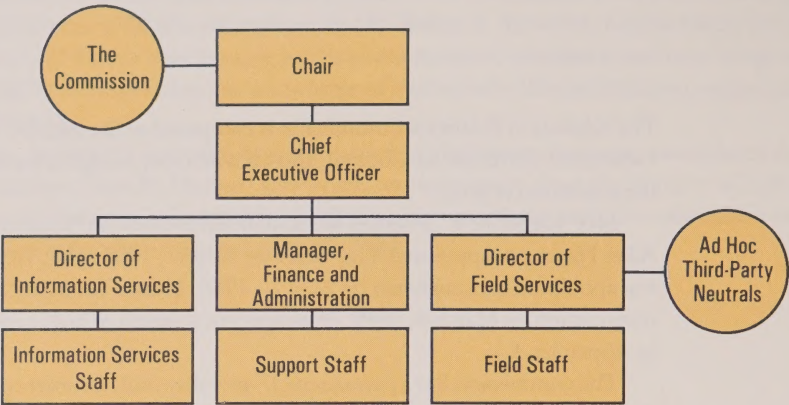
The commission has seen its work-load increase considerably. In 1979–80, ten years ago, there were 218 bargaining situations; there are now 265. The increase in the number of bargaining situations, as a result of the termination of joint-bargaining arrangements between affiliates and of the extension of separate schools, has meant an increase in the responsibility for monitoring and providing assistance in negotiations. A related increase (22 per cent) has occurred in the number of agreements to be analysed.

Information inquiries have also become more numerous over the years. The commission's Annual Report for 1979–80 noted that more than 1000 requests had been received that year, and, in 1984–85, more than 1100 requests had been processed. In the current year, 1038 requests have been received but the complexity of the requests has increased markedly in recent years.

The commission's staff complement has remained the same since it was set up. It should be noted that the in-house automation in processing data and information has facilitated an enhancement of services.

The commission has been careful with its resources. In the fiscal year 1985–86, the commission's budget was \$1 633 300. In large part because the 1988–89 year was very quiet in negotiations, the commission spent only \$1 400 958. The commission believes its resources are being well and efficiently utilized, but is concerned that continued constraint may make it difficult to respond to all of the needs of its clientele in negotiations.

Figure 1 Organizational Chart: The Education Relations Commission



II THE PARTIES

The parties involved in negotiations are the 2000 trustees and the 115 000 teachers who represent and work in the approximately 170 school boards in the province.

In general terms, there are four kinds of school boards. Boards of education (76) are non-denominational and each is divided into elementary and secondary panels. Some Roman Catholic separate school boards (40) operate both elementary and secondary schools. Other Roman Catholic separate school boards operate only elementary schools as do public district-school-area boards. There are, in addition, school boards on Canadian Forces Bases and in children's treatment centres, and one secondary school board. These school boards exist to serve students in isolated or remote areas and students on crown land.

Teachers and board trustees each have a central organization to which various federations and associations belong. For teachers, the parent body is the Ontario Teachers' Federation (OTF), an organization composed of representatives from the Federation of Women Teachers' Associations of Ontario (FWTAO), the Ontario Public School Teachers' Federation (OPSTF), the Ontario Secondary School Teachers' Federation (OSSTF), the Ontario English Catholic Teachers' Association (OECTA), and l'Association des enseignantes et enseignants franco-ontariens (AEEFO). Bargaining rights reside with the branch affiliates of these bodies.

The trustees' central organization, the Ontario School Trustees' Council (OSTC), is composed of representatives from the Ontario Public School Boards' Association (OPSBA), which was formed by an amalgamation of the three former public school board associations; from the Ontario Separate School Trustees' Association (OSSTA); and from l'Association française des conseils scolaires de l'Ontario (AFCSO).

III TEACHER/SCHOOL BOARD BARGAINING IN ONTARIO: A BRIEF HISTORY

On July 18, 1975, legislation granted teachers in Ontario the right to bargain collectively. Prior to the passage of this legislation, which would become known as Bill 100, the Ontario government had proposed a statute that would have included compulsory arbitration rather than the right to strike. In response to the proposed statute (Bill 275), both teachers' and trustees' organizations, albeit for different reasons, lobbied the government to include the right to strike in the legislation. The right to strike became a priority for teachers because they viewed compulsory arbitration as an ineffective form of dispute resolution. The trustees viewed compulsory arbitration as both an imposition on their right to manage and an erosion of local-board autonomy.

Moreover, those who drafted Bill 100 were convinced by events in the educational sector and in other jurisdictions that strike-prohibiting legislation is not generally effective. In fact, there was, and is, a view, supported by that of many labour-relations experts, that legislation prohibiting strikes might exacerbate employer/employee confrontation and adversarial feelings. Since the primary reason for proposing Bill 100 was to introduce to the province some stability and order in teacher/board bargaining, the right to strike was seen as a necessary part of the legislation.

The need for legislation governing teacher/board negotiations was obvious in the early 1970s. Teachers were demanding the right to bargain collectively on such issues as working conditions, grievance procedures, and financial remuneration. Some trustees viewed the collective-bargaining process as an infringement on management rights. The net result, in the absence of legislation, was that bargaining took place in a vacuum and that relationships between trustees and teachers were deteriorating on both an individual and an organizational level.

The School Boards and Teachers Collective Negotiations Act, 1975, brought order to this confusion by providing ground rules for collective bargaining. Although the most-publicized feature of the act was the right to strike, realistic alternatives such as voluntary arbitration or final-offer selection were provided at each step in the bargaining process. Moreover, events leading to a legal strike or lock-out under the act were regulated. For example, a strike or lock-out under the act is not legal until:

- a fact-finder has met with the parties and his/her report has been made public;
- a fifteen-day cooling-off period takes place after the fact-finder's report is submitted to the parties;
- the teachers have voted (by secret ballot in a supervised vote) on the last offer of the school board; and
- the teachers have voted (by secret ballot in a supervised vote) to take strike action.

Other provisions in the act should be noted. Negotiations take place at the school-board level between the local teachers' federation(s) and the school board. Separate negotiations are undertaken in the elementary and secondary panels of a board. The scope of negotiations is open; that is, all matters are negotiable. Each collective agreement is deemed to contain a procedure for the binding settlement of disputes arising out of the administration of the agreement if such a procedure has not been negotiated locally, and a strike or a lock-out is illegal during the term of the collective agreement.

Finally, the act provided for a five-person commission, the ERC, to monitor and assist all local negotiations between teachers and school boards and to administer the act. The commission was given seven specific functions under section 60 of the act:

- to monitor all negotiations
- to collect data and provide it to all parties in collective negotiations
- to assist the parties in their collective negotiations
- to train third-party neutrals
- to adjudicate charges of lack of good-faith bargaining
- to supervise last-offer, strike, and ratification votes
- to advise the Lieutenant Governor-in-Council concerning jeopardy to students' courses of study in the event of a strike and/or lock-out

Four years after the passage of Bill 100, the Minister of Education announced in the Legislature the establishment of a commission to review the collective-negotiations process between teachers and school boards. This commission (referred to as the Matthews Commission, chaired by Dr. B.C. Matthews, then president of the University of Waterloo) submitted its report to the Minister of Education in June 1980. On the basis of an analysis of the efficacy of Bill 100 during its first four years, the Matthews Commission proposed a small, but nevertheless significant, set of recommendations for changes to the act.

Redundant sections of the act were removed in 1981 during a review of legislation by the provincial government. At that time, the act was renamed and became the School Boards and Teachers Collective Negotiations Act, Revised Statutes of Ontario, 1980, Chapter 464.

Teacher/board negotiations were significantly altered when An Act Respecting the Restraint of Compensation in the Public Sector of Ontario and Monitoring of Inflationary Conditions in the Economy of the Province (Bill 179) was legislated. Bill 179, introduced in the Legislature on September 21, 1982, limited compensation increases in the public sector to a maximum of 9 per cent in the first year of the program (the “transitional” year) and 5 per cent in the second year (the “control” year). The legislation removed the right to strike or lock-out and also provided for the formation of the Inflation Restraint Board (IRB) to administer the act, and to monitor wage and price increases in the public and private sectors.

During 1984–85, the dynamics of teacher/board bargaining were further changed with the introduction of An Act to Provide for the Review of Prices and Compensation in the Public Sector and for an Orderly Transition of the Resumption of Full Collective Bargaining (Bill 111). This act provided for the return to normal forms of dispute resolution.

The Education Amendment Act (Bill 30) was introduced by the Minister of Education on July 4, 1985, and received Royal Assent on June 24, 1986. The provisions of Bill 30 extend full funding to those Roman Catholic separate school boards electing to perform the duties of a secondary school board for the appropriate jurisdictional area. To provide secondary school programs, the board must pass a by-law, which is subject to the approval of the minister.

As noted above, 40 separate school boards have opted to perform duties of secondary school boards. The commission decided that these boards should be considered comparable to boards of education with two panels of teachers so that teachers in the secondary schools of Roman Catholic school boards would have the same rights to negotiate their own agreements that secondary school teachers in boards of education have. In 1988–89, 11 agreements were made between the secondary school teachers of OECTA and AEEFO and the Roman Catholic separate school boards employing them; 27 sets of negotiations were conducted jointly by the elementary and secondary school teacher units.

The commission's decision on separate school teachers' right to bargain by panel was challenged by the Hamilton-Wentworth Roman Catholic Separate School Board. Following a hearing in the Divisional Court of the Supreme Court of Ontario on December 20, 1988, the Court upheld the commission's decision. An application for leave to appeal this decision to the Court of Appeal was subsequently dismissed.

IV NEGOTIATIONS

During the 1988–89 reporting year, collective agreements were in force covering the terms and conditions of employment of approximately 115 000 teachers in Ontario. The number of school boards and the branch affiliates by type, and the number of teachers employed by those boards, are summarized in table 1.

Table 1 School Boards, Branch Affiliates, and Teachers in Ontario, 1988–89

Board Classification	Number of Boards	Number of Branch Affiliates							
		FWTAO	OPSTF	OECTA ELEM	OECTA SEC	AEEFO ELEM	AEEFO SEC	OSSTF	FOPSAT†
Boards of Education	76*	76	76	—	—	10	22	76	—
Metro Toronto School Board*	1	1	1	—	—	—	—	—	—
Roman Catholic School Boards**	37	—	—	37	35	30	12	1	—
Roman Catholic Separate School Boards	12	—	—	11	—	10	—	—	—
Other Separate School Boards***	9	1	1	4	—	5	—	—	—
Other Public School Boards	19	19	19	—	—	—	—	—	—
Secondary School Boards	1	—	—	—	—	—	—	1	—
Boards on Crown Lands, Hospital and Hydro Centres, and the Provincial Schools Authority	15	14	14	—	—	4	1	3	1
Total	170	111	111	52	35	59	35	81	1
Number of Teachers††	121 201	35 754	14 291	28 293		6 290		36 573	296

* The Metropolitan Toronto School Board, which operates schools for the trainable retarded, does not operate elementary and secondary schools as such; however, its teachers are members of the elementary school branch affiliates, FWTAO and OPSTF.

** Refers to extended Roman Catholic separate school boards

*** Includes one Protestant separate school board

† Federation of Provincial Schools Authority Teachers

†† Source: Ontario Teachers' Federation. This figure includes all members during the year.

Note: Table 1 includes only boards that operate schools.

RENEWALS UNDER THE ACT

It should be noted that the number of negotiations during any given year will vary because of the existence of multi-year agreements; that is, under ordinary circumstances not every collective agreement comes up for renewal annually. As noted in table 2, 161 of 265 agreements were subject to negotiations in 1988-89.

Table 2 Status of Negotiations, 1988-89

Board Classification	Not Subject to Negotiation*	Subject to Negotiation
Boards of Education - Elementary**†	33	45
Board of Education - Secondary**	28	52
County & District Combined Roman Catholic Separate School Boards	33	38
Other School Boards	10	26
Total	104	161

* Concluded a multi-year settlement during a previous year
** Includes central agreement covering boards of education within Metropolitan Toronto
† Includes Metropolitan Toronto School Board and teachers in the schools operated for the trainable retarded

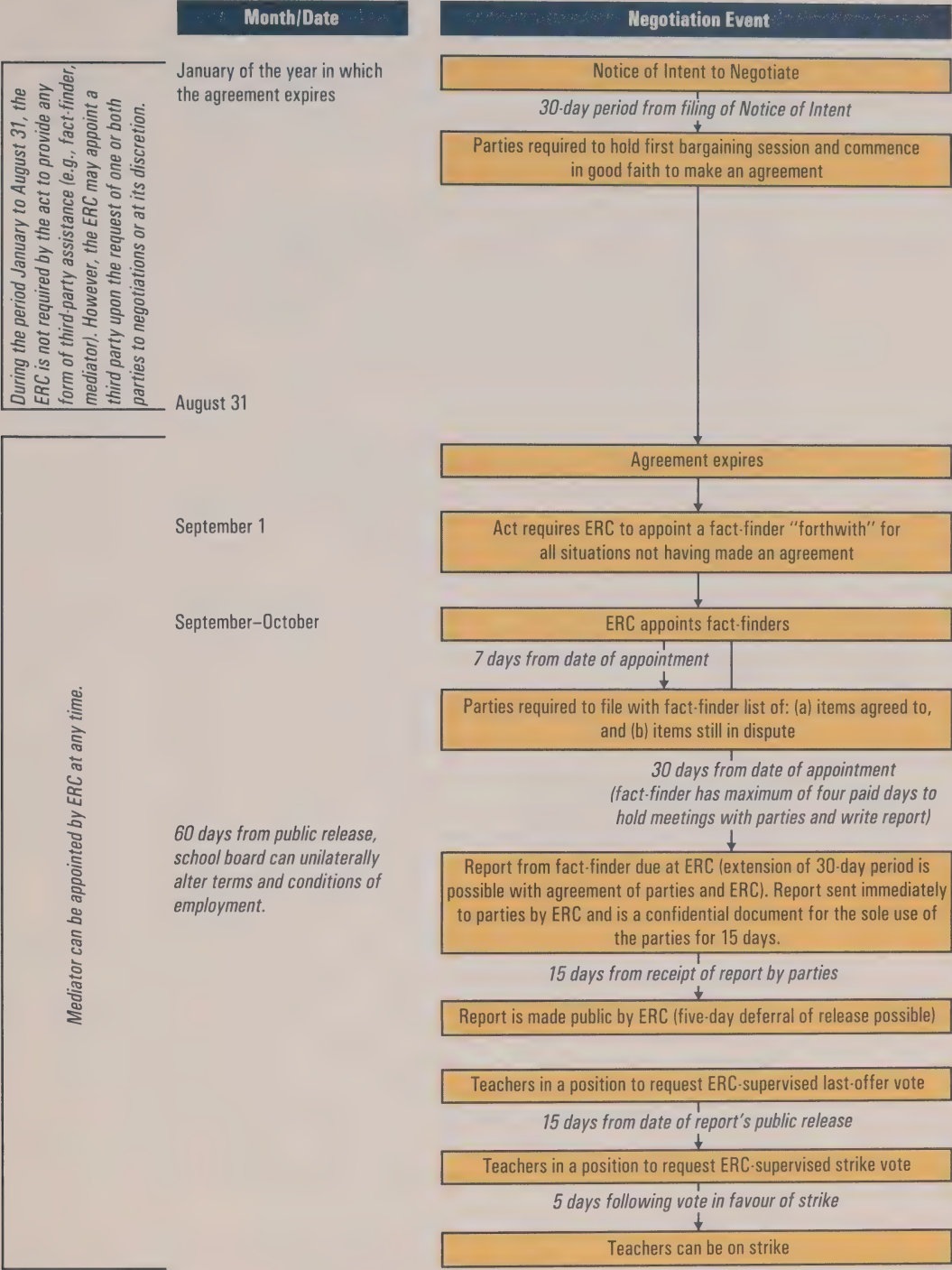
THIRD-PARTY APPOINTMENTS

The act specifies that all collective agreements expire August 31. If there are to be negotiations to renew the collective agreement, one of the parties is required to give its intent to negotiate (to the other party and to the commission) in January of the expiry year.

Negotiations between the parties typically occur from January to August, without intervention from the ERC, but if a settlement has not been reached by August 31, a fact-finder must be appointed by the commission. The commission may appoint a mediator to assist the parties at any stage in the negotiations.

Mediation and fact-finding may occur *prior* to August 31, where the parties have negotiated and are at impasse over the issues. If a fact-finder is appointed, he/she has thirty days to hold a hearing with the parties and file a written report with the commission and the parties. The report remains confidential for a fifteen-day period; however, if no settlement is reached during those fifteen days, the report is released to the public. The teachers are then in a position to request commission-supervised votes on acceptance or rejection of the school board's last offer and on the strike option.

Figure 2 The Negotiation Framework Under the School Boards and Teachers Collective Negotiations Act



Note: At any point, parties can jointly agree to resolve matters through either Voluntary Binding Arbitration or Final-Offer Selection.

Fact-Finding

Fact-finding affords an opportunity for the negotiating parties to clarify and narrow the differences in their position on various issues in order to reach a settlement when the collective agreement expires. As noted, the process becomes mandatory after August 31 (the contract expiry date in all teacher/school board collective agreements). Further, such a procedure is necessary under the act before teachers can take strike action or before a school board can initiate a lock-out. The fact-finding process also recognizes the public's right to know the substantive, procedural, and attitudinal issues of a dispute prior to its interrupting the normal school program.

The commission may appoint a fact-finder at any time during negotiations, either upon the request of one or both parties or upon the commission's deeming that the negotiations have reached an impasse and would benefit from such assistance. The fact-finder, a third-party neutral, investigates the particular local situation and then files a written report with the commission. A time limit of thirty days is established in the act for the fact-finder to meet with the parties, examine their written submissions, listen to oral arguments, write the report, and submit it to the commission. The commission, in turn, delivers the report to the parties. The parties then have fifteen days in which to continue negotiations using the fact-finding report to assist them.

The report must set out those matters upon which the parties have agreed as well as those in dispute. A fact-finder may make recommendations regarding any matter that he/she feels is relevant and on any of the items in dispute. The fact-finder's recommendations, which are not binding upon the parties, often narrow their differences, or are accepted in whole or in part by the parties.

It is clear from experience in the years since the passage of the act that fact-finding has the potential to assist, and in many cases actually has assisted, the parties to reach negotiated settlements. To date, the commission and the negotiating parties have generally found it to be a useful process that has worked reasonably well.

We have reported in previous annual reports that, under any labour legislation (including Bill 100), there is a very real danger that a process such as fact-finding will be ignored or misused by the parties, thereby weakening the philosophical thrust of the act and undermining its effectiveness. As a consequence, the commission has encouraged the parties to utilize fact-finding only if absolutely necessary. The commission's preference is, wherever possible, to have the parties settle prior to the point when, under the act, a fact-finder must be appointed. Also, the commission has attempted to improve the effectiveness of the fact-finding process and has conveyed to its third parties that a meaningful fact-finder's report – one that addresses in a concrete way the substantive and procedural issues in a dispute – is an essential part of the process.

The commission is concerned about the fact that many of the requests for fact-finding prior to the expiry of agreements are being made after very little negotiation has occurred. The mandatory meeting after notice to negotiate has been given has too often become a formality. Parties may have met only two or three times to outline their positions prior to issuing a request for third-party assistance. It is evident that, in these cases, no real negotiation has occurred, that the parties have not really explored each other's thinking on the issues and are expecting that a third party will be able to do the negotiating work for them.

Nevertheless, our experience of fact-finding during the past two years is heartening. As table 4 indicates, nearly 70 per cent of the negotiations in 1988–89 (112 of 161) came to agreements without the help of and intervention by a fact-finder, the pattern of the early 1980s.

Table 3 Fact-Finder Appointments, Reports Released to Parties, and Reports Made Public, 1988–89

Board Classification	Fact-Finder Appointments	Reports Released to Parties	Reports Made Public
Boards of Education – Elementary	14	11	9
Boards of Education – Secondary	14	10	9
County & District Combined Roman Catholic Separate School Boards	20	16	12
Other School Boards	1	—	—
Total	49	37	30

Table 4 Fact-Finder Appointments, Reports Released to Parties, and Reports Made Public, 1976–77 to 1988–89

Year	Number of Situations Negotiating	Fact-Finder Appointments	Reports Released to Parties	Reports Made Public
1976–77	189	71 (37.6%)	51 (27.0%)	39 (20.6%)
1977–78	210	63 (30.0%)	54 (25.7%)	42 (20.0%)
1978–79	207	114 (55.1%)	95 (45.9%)	69 (33.3%)
1979–80	180	109 (60.5%)	86 (47.8%)	77 (42.8%)
1980–81	132	49 (37.1%)	43 (32.6%)	34 (25.8%)
1981–82	168	50 (29.8%)	37 (22.0%)	29 (17.3%)
1982–83	173	62 (35.8%)	52 (30.1%)	48 (27.7%)
1983–84	178	0	0	0
1984–85	227	130 (57.3%)	108 (47.6%)	92 (40.5%)
1985–86	192	81 (42.2%)	62 (32.3%)	53 (27.6%)
1986–87	190	80 (42.1%)	67 (35.3%)	57 (30.0%)
1987–88	145	50 (34.5%)	31 (21.4%)	27 (18.6%)
1988–89	161	49 (30.4%)	37 (23.0%)	30 (18.6%)

Mediation

Mediators, or “persons to assist” as they are referred to under section 13 of the act, can be appointed at any time, either at the discretion of the commission or, with commission concurrence, at the request of one or both negotiating parties. Table 5 shows the number of mediators appointed in 1988–89 and in each bargaining round since the inception of the act. Mediators were appointed in 34 situations in the 1988–89 bargaining year, or in slightly more than 21 per cent of the cases.

Table 5 Appointment of Mediators, 1975–76 to 1988–89

Year	Number of Negotiations Conducted	Number of Mediators Appointed	Per Cent of Negotiations Conducted With Mediators
1975–76	205	51	24.9
1976–77	189	38	20.1
1977–78	210	58	27.6
1978–79	207	72	34.8
1979–80	180	63	35.0
1980–81	132	35	26.5
1981–82	168	47	28.0
1982–83	173	50	28.9
1983–84	178	5	2.8
1984–85	227	96	42.3
1985–86	192	49	25.5
1986–87	190	65	34.2
1987–88	145	31	21.4
1988–89	161	34	21.1

As indicated in table 6, no mediation was required in 127 of the 161 negotiations (in 79 per cent of the cases).

Table 6 Assignment of Mediators, 1988–89

Board Classification	Number of Situations Negotiating	No Mediation	Mediation Only	Mediation Pre-Fact-Finding Only	Mediation Post-Fact-Finding Only	Mediation Both Pre- and Post-Fact-Finding
Boards of Education – Elementary	45	35	2	1	6	1
Boards of Education – Secondary	52	40	4	1	6	1
County & District Combined Roman Catholic Separate School Boards	38	27	2	—	7	2
Other School Boards	26	25	1	—	—	—
Total	161	127	9	2	19	4

Table 7 Assignment of Mediators, 1976–77 to 1988–89

Year	Number of Situations Negotiating	No Mediation	Mediation Only	Mediation Pre-Fact-Finding Only	Mediation Post-Fact-Finding Only	Mediation Both Pre- and Post-Fact-Finding
1976–77	189	151 (79.9%)	7 (3.7%)	2 (1.0%)	28 (14.8%)	1 (0.5%)
1977–78	210	152 (72.4%)	21 (10.0%)	3 (1.4%)	24 (11.4%)	10 (4.8%)
1978–79	207	135 (65.2%)	9 (4.3%)	7 (3.4%)	47 (22.7%)	9 (4.3%)
1979–80	180	117 (65.0%)	4 (2.2%)	3 (1.7%)	46 (25.5%)	10 (5.5%)
1980–81	132	97 (73.5%)	9 (6.8%)	3 (2.3%)	21 (15.9%)	2 (1.5%)
1981–82	168	121 (72.0%)	16 (9.5%)	10 (5.9%)	17 (10.1%)	4 (2.4%)
1982–83	173	123 (71.1%)	13 (7.5%)	20 (11.6%)	14 (8.1%)	3 (1.7%)
1983–84	178	173 (97.2%)	5 (2.8%)	0	0	0
1984–85	227	131 (57.7%)	22 (9.7%)	16 (7.0%)	48 (21.1%)	10 (4.4%)
1985–86	192	143 (74.5%)	8 (4.2%)	10 (5.2%)	30 (15.6%)	1 (0.5%)
1986–87	190	125 (65.8%)	12 (6.3%)	23 (12.1%)	30 (15.8%)	0
1987–88	145	114 (78.6%)	7 (4.8%)	1 (0.7%)	23 (15.9%)	0
1988–89	161	127(78.9%)	9 (5.6%)	2 (1.2%)	19 (11.8%)	4 (2.5%)

Table 8 shows the number of jurisdictions that received either fact-finding or mediation assistance. A noticeable decrease occurred between 1986–87, when 48.4 per cent of the bargaining situations required assistance, and 1987–88, when 39.3 per cent had either fact-finding or mediation. A further decrease occurred between 1987–88 and 1988–89.

Overall, therefore, the amount of third-party activity in 1988–89 can be characterized as well below average when compared to that of previous years.

Table 8 Jurisdictions Receiving Either Fact-Finding or Mediation Assistance, 1976–77 to 1988–89

Year	Number of Situations Negotiating	Fact-Finder Appointments	Mediation Appointments	Total	%
1976–77	189	71	7	78	41.3
1977–78	210	63	21	84	40.0
1978–79	207	114	9	123	59.4
1979–80	180	109	4	113	62.8
1980–81	132	49	9	58	43.9
1981–82	168	50	16	66	39.3
1982–83	173	62	13	75	43.3
1983–84	178	0*	5	5	2.8
1984–85	227	130	22	152	67.0
1985–86	192	81	8	89	46.3
1986–87	190	80	12	92	48.4
1987–88	145	50	7	57	39.3
1988–89	161	49	9	58	36.0

*No appointments as a result of provincial restraint legislation

SUPERVISED VOTES: LAST-OFFER, STRIKE, AND RATIFICATION

Prior to any strike activity, teachers must first request (in writing) the board's last offer concerning all matters agreed upon and all matters remaining in dispute. A secret-ballot vote on the board's last offer must then be conducted under the commission's supervision. If teachers reject this offer, a second secret-ballot vote to determine whether teachers favour a strike may then be held, again under the supervision of the commission. Any ratification vote ending a strike also must be supervised by the commission.

Table 9 shows the number of last-offer, strike, and ratification votes conducted by the commission over its history, including the 1988–89 round. A total of twenty-two votes – eleven last-offer, nine strike, and two ratification – were supervised by the commission in 1988–89.

The number of last-offer and strike votes represents the negotiations that proceed, or almost proceed, to sanction. Therefore, last-offer and strike votes are an index of the degree of difficulty in achieving resolution in a particular negotiation round. The number of votes conducted in 1988–89 was relatively low in comparison with past experience.

Table 9 Supervised Board's Last-Off, Strike, and Ratification Votes, 1975-76 to 1988-89

Year	1975-76	76-77	77-78	78-79	79-80	80-81	81-82	82-83	83-84	84-85	85-86	86-87	87-88	88-89	Total
<i>Last-Off Votes</i>															
Elementary*	-	-	2	1	1	-	-	-	-	3	1	1	1	-	-
Secondary	15	5	8	9	12	1	7	4	-	23	7	8	-	3	-
RCS	-	5	5	3	12	3	5	-	-	13	7	7	6	8	-
Other	-	-	-	1	1	1	-	-	-	-	-	-	-	-	-
Total	15	10	15	14	26	5	12	4	-	39	15	16	7	11	189
<i>Strike Votes</i>															
Elementary	-	-	1	1	1	-	-	-	-	-	1	1	-	-	-
Secondary	15	4	7	4	9	1	5	1	-	16	4	7	-	2	-
RCS	-	1	4	2	7	2	5	-	-	7	5	6	5	7	-
Other	-	-	-	1	1	-	-	-	-	-	-	-	-	-	-
Total	15	5	12	8	18	3	10	1	-	23	10	14	5	9	133
<i>Ratification Votes</i>															
Elementary**	-	-	-	-	2	-	-	-	-	-	-	-	1	-	-
Secondary	-	1	5	2	4	2	3	-	-	2	2	1	-	1	-
RCS	-	-	1	-	2	1	2	-	-	3	1	5	2	1	-
Other	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total	-	1	6	2	8	3	5	-	-	5	3	6	3	2	44
Total Vote by Year	30	16	33	24	52	11	27	5	-	67	28	36	15	22	366

* Includes central agreement covering boards of education within Metropolitan Toronto

** Boards of education within Metropolitan Toronto counted individually

STRIKES, LOCK-OUTS, AND SCHOOL CLOSINGS

Out of the 161 sets of negotiations in the 1988–89 reporting year (see table 2), 2 resulted in sanctions (see table 10).

The strike that occurred in the Kirkland Lake District Roman Catholic Separate School Board is the longest to have taken place in elementary schools since the passage of the act in 1975. The length of the strike was attributable to particularly difficult and intractable local circumstances.

Table 10 Strikes, Lock-outs, and Closings of Schools, September 1, 1988, to August 31, 1989

Board	Number of Schools	Number of Teachers in Branch Affiliate(s)	Number of Students Affected	Type of Sanction	Duration of Sanction	Final Settlement
Durham Board of Education	18	1 250.5	17 921	Full withdrawal	Jan. 23/89 (1 inst. day)	Negotiated with mediation assistance
Kirkland RCSS Board	8	73	1 220.5	Full withdrawal	Apr. 18/89 – June 14/89 (41 inst. days)	Negotiated with mediation assistance

Note: A complete record of sanctions since the passage of the act is included in Appendix B.

VOLUNTARY BINDING ARBITRATION/ FINAL-OFFER SELECTION

At any time during negotiations, the parties can mutually agree to choose one of two options for third-party resolution: voluntary binding arbitration or final-offer selection (the process involved in each option is described below). If a negotiated settlement is reached at any time during these procedures, the process is automatically terminated. As indicated in table 11, neither voluntary binding arbitration nor final-offer selection was utilized in any jurisdiction during the 1988–89 round of negotiations.

Voluntary Binding Arbitration

Under voluntary binding arbitration, the parties may refer all matters remaining in dispute to either an arbitrator or a board of arbitration. Within seven days of the appointment of the arbitrator or chair of the arbitration board, each party must submit to the other party, and to the arbitrator/chair, written notice of all matters agreed upon during negotiations and all matters remaining in dispute. The arbitrator or board of arbitration is responsible for establishing procedures that give both parties full opportunity to present their evidence and make their submissions.

Table 11 Agreements Reached by Voluntary Binding Arbitration or Final-Offer Selection, 1988–89

Board Classification	Agreements Reached by Voluntary Binding Arbitration	Agreements Reached by Final-Offer Selection
Boards of Education – Elementary	—	—
Boards of Education – Secondary	—	—
County & District Combined Roman Catholic Separate School Boards	—	—
Other School Boards	—	—
Total	0	0

Within sixty days of the appointment of the arbitrator/chair, or any longer period of time agreed to by both parties, the arbitrator or board of arbitration must provide the parties with a written report of the decision reached. The decision of the arbitrator or board of arbitration is final and binding and the parties are required, within thirty days of receipt of that decision, to incorporate, within a signed agreement, the matters agreed to in negotiations and the decision rendered through arbitration.

Final-Offer Selection

Under final-offer selection, each party's final position concerning the items remaining in dispute, together with any supporting evidence, is presented to a selector and to the other party within fifteen days of the appointment of a selector. Each party may then provide a written response to the other party's position, and the selector may hold a hearing.

Within fifteen days of the hearing (or of notice from the parties to dispense with the hearing), the selector must choose one party's final offer *in its entirety*. This offer is then incorporated into an agreement that also includes those items agreed to by the parties during negotiations.

GRIEVANCE ARBITRATION

Grievance-procedure clauses in some collective agreements specify that the commission be asked to appoint a single arbitrator or chair of an arbitration board to resolve a grievance as the final and binding step of the procedure.

During 1988-89, the commission made five such appointments (see table 12).

Table 12 Appointments Concerning Grievance Arbitration, 1988-89

Board Classification	Number of Appointments by ERC	Nature of Appointments
Boards of Education - Elementary	—	—
Boards of Education - Secondary	1	Chair
County & District Combined Roman Catholic Separate School Boards	4	Chair
Other School Boards	—	—
Total	5	

Note: Appointments since 1976-77 are presented in table 13.

Table 13 Appointments Concerning Grievance Arbitration, 1976-77 to 1988-89

Year	Number of Appointments by ERC
1976-77	9
1977-78	13
1978-79	13
1979-80	8
1980-81	14
1981-82	3
1982-83	3
1983-84	7
1984-85	8
1985-86	10
1986-87	8
1987-88	8
1988-89	5

DETERMINATION OF GOOD-FAITH BARGAINING

Table 14 outlines the number of complaints of failure to bargain in good faith received by the Education Relations Commission in 1988–89. As the table indicates, the commission was not required to make any determination in 1988–89.

Table 14 Good-Faith Bargaining Charges, 1988–89

Complainant	Respondent	Disposition
Branch Affiliate of OSSTF	Lanark County Board of Education	Withdrawn
Branch Affiliates of OECTA and AEEFO	Kirkland Lake RCSS Board	Resolved
Branch Affiliate of OECTA (Secondary)	Essex County RCSS Board	Withdrawn
Branch Affiliates of OECTA (Elementary) and AEEFO	Hamilton-Wentworth RCSS Board	Resolved
York Region Board of Education	Branch Affiliate of OSSTF, District 11	Pending

ADVISEMENTS

During the 1988–89 reporting year, no advisements were issued by the commission to the Lieutenant Governor-in-Council concerning a strike, lock-out, or closing of schools that would place in jeopardy the successful completion of courses of study by students.

JUDICIAL REVIEW OF THE DETERMINATION OF THE COMMISSION WITH RESPECT TO THE HAMILTON-WENTWORTH ROMAN CATHOLIC SEPARATE SCHOOL BOARD AND THE TEACHERS EMPLOYED BY THE BOARD

As noted earlier, the Divisional Court of the Supreme Court heard the challenge by the Hamilton-Wentworth Roman Catholic Separate School Board on December 20, 1988. The matter arose because of a determination by the commission that the board had to bargain in good faith with the branch affiliate of secondary teachers of OECTA employed by the board, that there was no requirement following Bill 30 that elementary and secondary teachers in a Roman Catholic school board bargain jointly. The court upheld the commission’s decision. The board applied for Leave to Appeal before the Ontario Court of Appeal. This hearing took place after the period documented in this report; however, the application was dismissed. An excerpt from part of the decision by the Divisional Court appears in Appendix C.

DURATION OF AGREEMENTS

The rate of negotiation activity for the 1988-89 reporting year was slightly lower than that for the previous year because of an increase in the number of two- or three-year agreements. In 1988-89, 92 agreements were signed, covering two or more years (see table 15).

Table 15 Duration and Termination Dates of Settlements Concluded, 1988-89

Board Classification	Not Settled	1 Year Aug. 31/89	2 Years Aug. 31/90	3 Years Aug. 31/91
Boards of Education - Elementary	—	21	23	1
Boards of Education - Secondary	—	28	24	—
County & District Combined Roman Catholic Separate School Boards	—	6	22	10
Other School Boards	—	14	12	—
Total	—	69	81	11

V STAFF ACTIVITIES

FIELD SERVICES

Monitoring of Negotiations

The commission stays informed about negotiations between teachers and school boards through its Field Services staff. Two Field Services officers, under the direction and supervision of the Director of Field Services, are responsible for monitoring the negotiations in all jurisdictions in the province. Regular contact, undertaken both through on-site visits and by telephone, enables the individual field officer to gain an understanding of emerging issues in negotiations, to get to know the parties involved, and to become thoroughly familiar with important developments at the local level. In turn, the parties become better acquainted with the commission's representatives and more knowledgeable about the act and the commission's policies, procedures, and resources. Through this exchange, information as to progress is gathered, and procedures and requirements under the act are clarified.

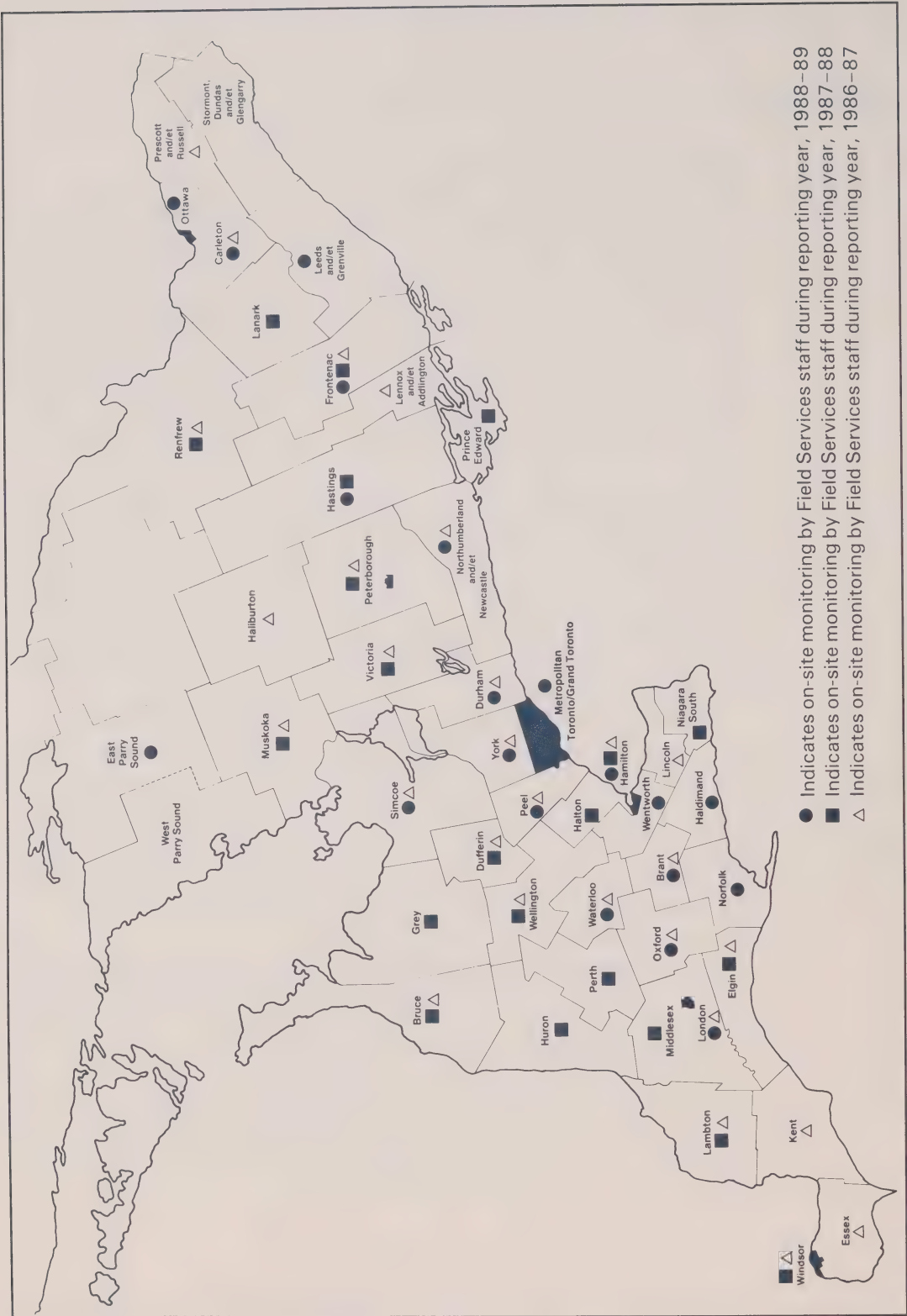
Maintaining an intimate awareness of negotiations between branch affiliates (a branch affiliate, comparable to a local union, is composed of all the teachers employed by a board who are members of one of the provincial teachers' federations or associations) and school boards is particularly advantageous when appointments of third-party neutrals by the commission become necessary. In making judgments regarding the appropriateness or timing of an appointment and/or the individual to be named as mediator or fact-finder in any given area, the commission has been able to rely on the firsthand information and advice of its Field Services staff.

Field Services staff formally analyse all upcoming sets of negotiations early in the negotiation year. These analyses include an assessment of the degree of difficulty likely to characterize each situation and the identification of potentially troublesome issues and barriers or stumbling-blocks to settlement. In making their analyses, Field Services staff include recommendations regarding the style, timing, and type of third-party assistance appropriate to each situation. This material is summarized and evaluated against previous developments in the particular teacher/school board relationship. Such analyses lead to more effective and economical third-party appointments being made, and ensure that appointment decisions are made on an informed basis.

In the monitoring activities of the Field Services staff, emphasis is placed on the field officer's establishing a high profile with the parties involved and on his/her strengthening of relations with the branch affiliates and school boards in order to enable the commission to provide the best possible service to the negotiating parties.

In addition to the monitoring and third-party appointment processes, Field Services staff are intensively involved in a number of other commission endeavours including selecting, training, and evaluating third parties; administering quasi-judicial matters; and undertaking preventive-mediation programs. The activities of the Field Services staff during the 1988-89 reporting year are documented below.

Map 1 School Divisions, Southern Ontario



Selection and Training of Third Parties

Field Services staff participate not only in the appointment of third-party neutrals, but also in their selection, training, and evaluation.

Selection of Third Parties

Clause 60(1)(e) of the act directs the commission “to select and, where necessary, to train persons who may act as mediators, fact-finders, arbitrators, and selectors”.

The commission selects persons to appoint from a list of qualified fact-finders and mediators to assist in collective negotiations, as required. Its roster includes men and women from a variety of occupations, including labour/management arbitrators, labour lawyers, academics, and former educational administrators and teachers. The commission continues to recruit a number of third parties who are bilingual.

Today, individuals selected by the commission not only must bring strong qualifications to the ERC, but also must participate in the commission’s training programs. As well, the commission now undertakes an evaluation of its third parties, and only those individuals who are considered to have performed well are reappointed. The commission continues to seek individuals whose background, experience, and understanding of collective bargaining in education render them eligible to provide the kind of third-party assistance required by the ERC.

Training of Third Parties

In March, an orientation session was held in Ottawa for a group of trainee bilingual fact-finders and mediators. A thorough exploration of the bargaining legislation, structure, and issues was undertaken. Experienced third parties also attended, which contributed further to the practical nature of this training activity. Participants will continue their training later in the year as they are appointed to assist fact-finders and mediators. Upon the successful completion of an assistantship, these persons are ready to assume full responsibility for a third-party role.

On May 4–5, a training session was held for all third parties. It was an opportunity to review the previous year and to get a sense of what 1989–90 would produce in terms of the bargaining context and the issues likely to be significant. Because of the requirement of provincial legislation for school boards to have pay-equity plans in place by January 1990, this topic occupied an important place on the agenda. Representatives from the Pay Equity Commission, as well as those from the parties, provided an overview of the legislation and some ideas as to how this matter would be addressed at the bargaining table. A general review of the system of financing education in the province was undertaken, with emphasis upon recent alterations in the grant scheme to school boards.

On June 15–16, the commission hosted a training session for approximately 20 third parties who had either limited or no experience in the role of mediator. This workshop was led by Tom Colosi, vice-president of the American Arbitration Association. Mr. Colosi has been involved with the commission on a number of occasions in professional-development activities and, as in the past, was evaluated by the participants as having conducted a very successful workshop. He presented the similarities in the roles of negotiator and mediator and in developing a sensitivity to the persons involved and the stages that mediation goes through.

Map 2 Roman Catholic Separate School Zones, Southern Ontario



- Indicates on-site monitoring by Field Services staff during reporting year, 1988-89
- Indicates on-site monitoring by Field Services staff during reporting year, 1987-88
- △ Indicates on-site monitoring by Field Services staff during reporting year, 1986-87

Administration of Quasi-judicial Matters

Field Services staff are involved in three areas: the appointment of returning officers when branch affiliates request the holding of commission-supervised votes, the investigation of complaints alleging the failure of a party to negotiate in good faith, and the appointment of grievance arbitrators.

Commission-supervised Votes

Following the public release of a fact-finder's report, a branch affiliate is in a position to request that the commission supervise a vote by its members on the last offer received from the school board and/or on whether or not a strike is favoured. Also, in a strike situation, the teachers are required to conduct a commission-supervised vote concerning the approval of the terms of agreement once a settlement is reached.

Field Services staff arrange for qualified people throughout the province to act as returning officers for these votes. During the 1988–89 reporting year, twenty-two votes were conducted in eleven jurisdictions.

Complaints Related to Good-Faith Bargaining

The commission has established a procedure for dealing with complaints related to good-faith bargaining. The procedure provides that prior to a formal hearing an informal effort by the commission staff be undertaken to investigate a complaint with a view to its resolution.

Appointment of Grievance Arbitrators

Occasionally, the commission is approached to appoint either a single arbitrator or the chair of a board of arbitration. The request to appoint may arise for one of two reasons: (1) the parties have negotiated in their collective agreement that, if they are unable to agree, they will turn to the commission, or (2) the parties agree, barring any collective-agreement provision, to ask that the commission assist by making an appointment.

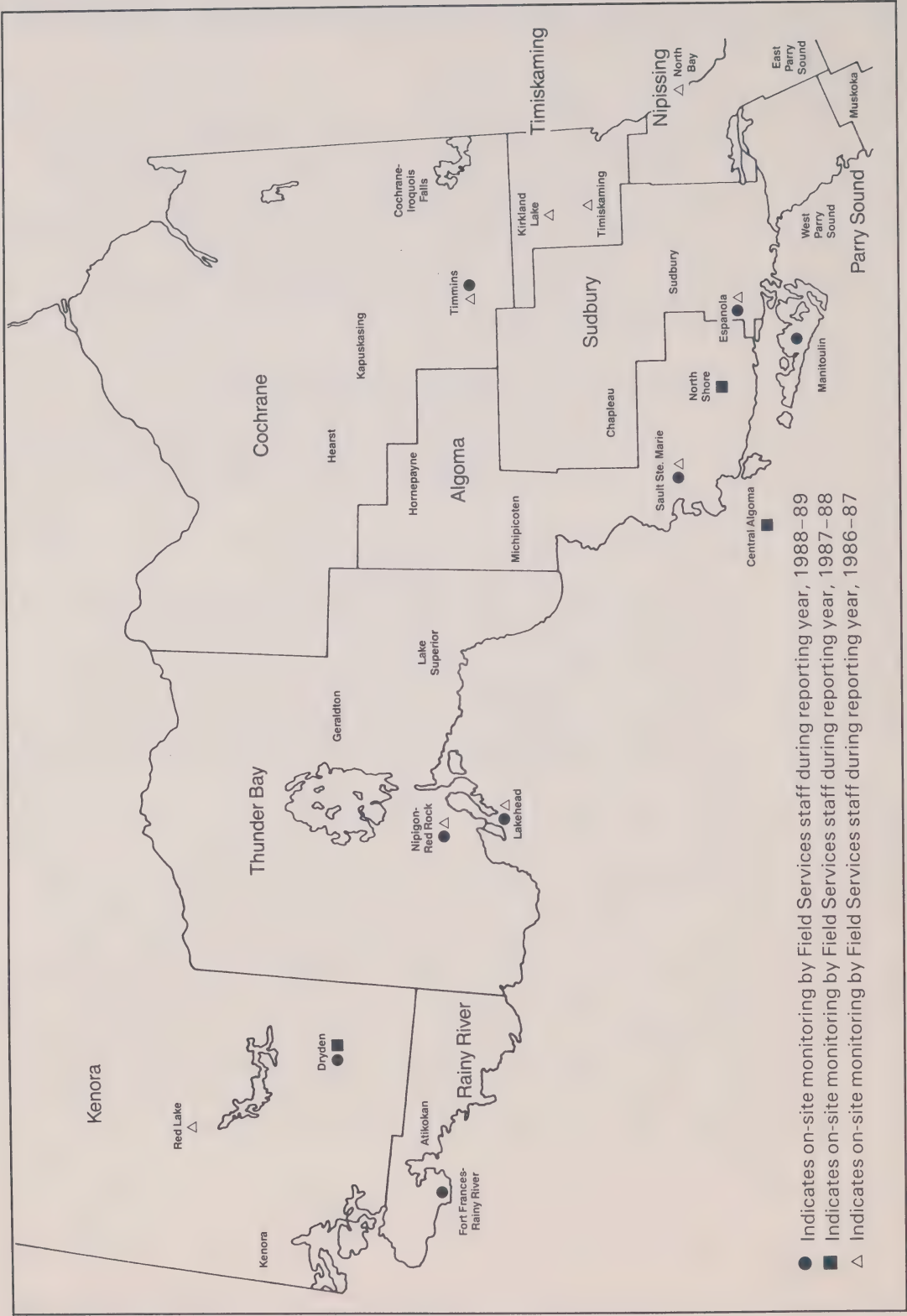
In undertaking this function, there is always a conscious effort to appoint as arbitrators only those who are able to offer hearing dates to the parties within a three- to four-week time-frame.

Preventive Mediation

Preventive-mediation programs are administered by the Field Services staff. Their main purpose is to assist the parties in reducing, if not eliminating, the obstacles that prevent resolution of matters of mutual concern. In addition, preventive mediation attempts to equip the parties to conduct their negotiations in a more effective and efficient manner within the existing structure of collective bargaining. It must be stressed that preventive-mediation activities are not designed to change the present structure of collective bargaining. However, they are designed to enhance it and to make it work for the benefit of both parties. In contrast to conventional mediation, preventive mediation is conducted outside negotiation, and only after both parties in a jurisdiction request ERC involvement.

The two dimensions of the preventive-mediation program are relationships by objectives and grievance mediation.

Map 3 School Divisions, Northern Ontario



Relationships by Objectives (RBO)

Prior to the formal establishment of relationships by objectives, the commission provided an activity called “technical service”.

The RBO program involves two numerically equal groups of teachers and trustees/administrators working through the following six steps:

- identification of the issues to be resolved as seen by each side
- explanation of issues and rationale by each side to the other
- agreement on a list of objectives based on the issues
- creation of action steps to meet these objectives by groups comprising equal numbers of members from each party
- acceptance and/or tailoring of these action steps by teachers’ and trustees’ groups separately
- acceptance of action steps, assignment of responsibility, and the setting of time lines jointly

This program was originally developed to take place over a period of three days and in a residential setting. To better meet the needs of the parties, the commission has altered the program, shortening it from three days to two in order to accommodate the problems encountered in attempting to free key trustees, teachers, and administrators for a three-day period during the school year.

The first step in the process is undertaken prior to the residential portion of the workshop. Using the information provided by the parties in this first session, the commission staff prepares a list of objectives to be agreed upon or tailored to be accepted by both parties.

The design of the program allows the participants to develop separate statements of the issues while working within the school system and then to co-operate in amalgamating these objectives through joint action.

In scheduling the last five steps of the program to take place away from the pressures of the school system, the commission encourages the opening of new communication links and channels as well as the clearing away of inappropriate and inaccurate perceptions that exist in most organizations.

The commission offers this program to school boards throughout Ontario and insists that two criteria be met: that both parties indicate a desire to participate in the program and that the program not be offered in any jurisdiction where negotiations are in progress.

The Lakehead Roman Catholic Separate School Board and its teachers utilized this program during the 1988–89 reporting year. Follow-up activities to previously held workshops were scheduled with the Sault Ste. Marie Board of Education and its elementary teachers, the Wellington County Board of Education and its secondary teachers, and the Sault Ste. Marie Roman Catholic Separate School Board and its teachers.

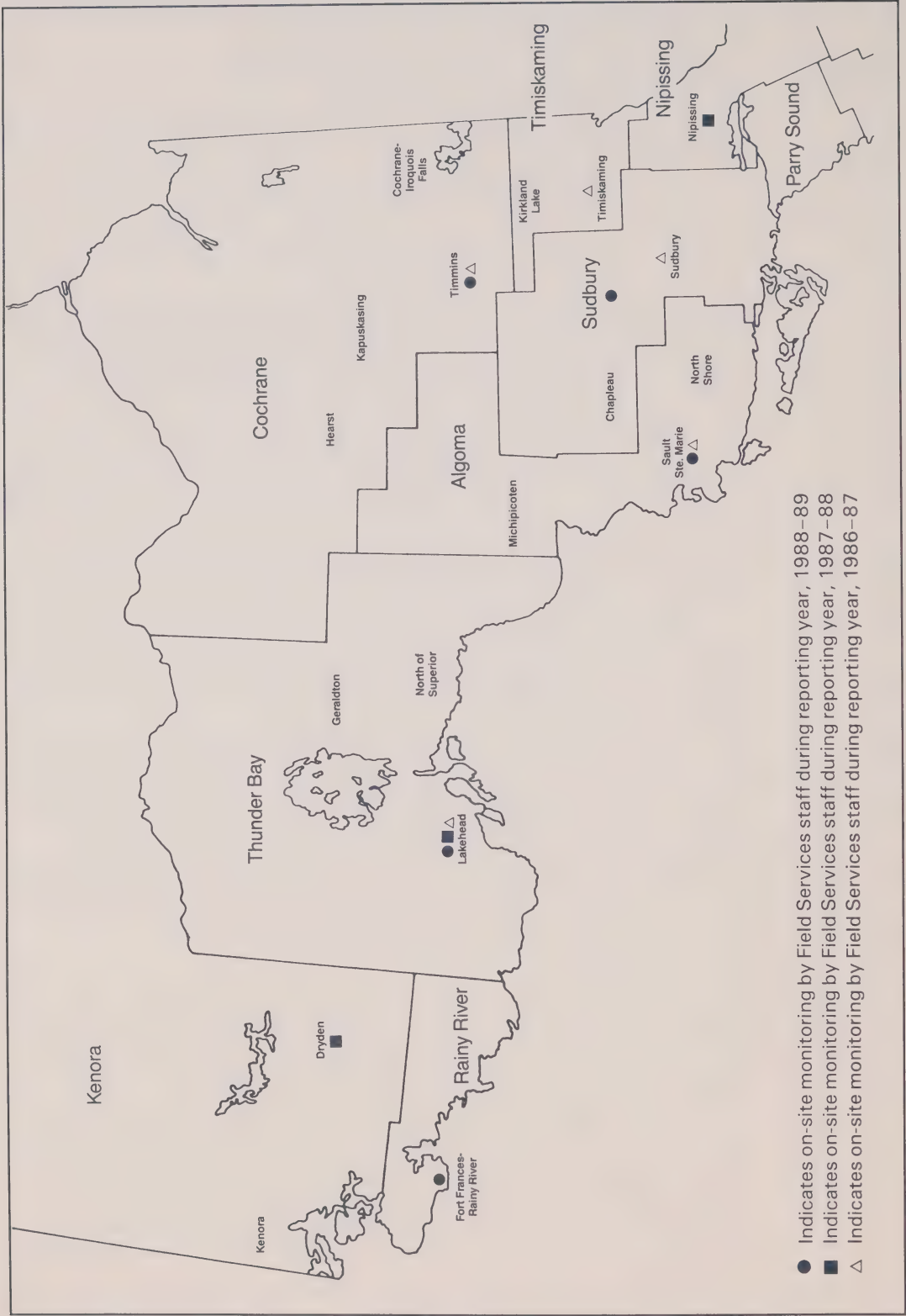
Grievance Mediation

The grievance-mediation program is designed to assist the parties in resolving differences arising from the interpretation, application, administration, or alleged contravention of the collective agreement. Adoption of the program does not preclude the parties’ proceeding to arbitration if the matter is not resolved through mediation.

One purpose of grievance mediation is to alleviate the build-up of negative attitudes that occur within a system because of unresolved grievances. Such grievances often become issues in negotiations. Moreover, grievance mediation is a method of settling disputes directly and as quickly as possible and is much less expensive than arbitration.

The commission introduced grievance mediation in 1979–80. Meetings were held with the provincial teachers’ federations and trustees’ associations to present the concept and explain some of its advantages.

**Map 4 Roman Catholic Combined Separate School Zones,
Northern Ontario**



Other Activities

Liaison activities continued during the 1988–89 reporting year, between ERC Field Services staff and the staffs of the various provincial teachers' and trustees' organizations. These activities facilitated an ongoing dialogue about the collective-bargaining process and its perceived problems or areas for improvement. Interaction continued with a variety of governmental bodies, in particular, the Ministry of Labour and the Pay Equity Commission.

Throughout the year, Field Services staff were asked to act as presenters in a wide variety of workshops and seminars. Among these were the Ontario School Trustees' Council Salary Conference, the Isolate Teachers' Conference, the Society for Professionals in Dispute Resolution Annual Conference, the Canadian Industrial Relations Association, the Ontario Public School Boards Association, the Ontario School Trustees' Council Conference for New Trustees, the Ontario Separate School Trustees' Association, and the Ontario Separate School Supervisory Officers' Association.

An important aspect to the year was the publication of a study of the fact-finding process undertaken by Professor Richard Jackson of Queen's University. The study, which benefits from Professor Jackson's skills as both a researcher and an experienced third party, will be distributed to all local and provincial teachers' and trustees' organizations.

The commission is a member of the Association of Labour Relations Agencies (ALRA). During 1989, ALRA's annual conference was held in Toronto, and staff were intensively involved in both its planning and its conduct. The first day of the conference, Advocates Day, was open to labour-relations practitioners. The commission assumed responsibility for this part of the conference, which involved such notable speakers as Stephen Lewis, former Ambassador to the United Nations; and William Kelly, recently retired deputy minister with Labour Canada.

INFORMATION SERVICES

Information Services is responsible for the development and maintenance of an Ontario teacher/school board collective-bargaining information system. Information support services are delivered to a diverse client group, including negotiators, provincial teachers' and trustees' organizations, the commissioners and staff of the ERC, fact-finders, mediators and arbitrators, advocates, Ontario government ministries, labour practitioners outside the Ontario education sector, researchers, and the general public. The orientation of Information Services is towards client need – both existing and anticipated. Improving service efficiency and effectiveness are basic objectives.

During the reporting year, a number of activities and initiatives were undertaken to improve both information management and service delivery.

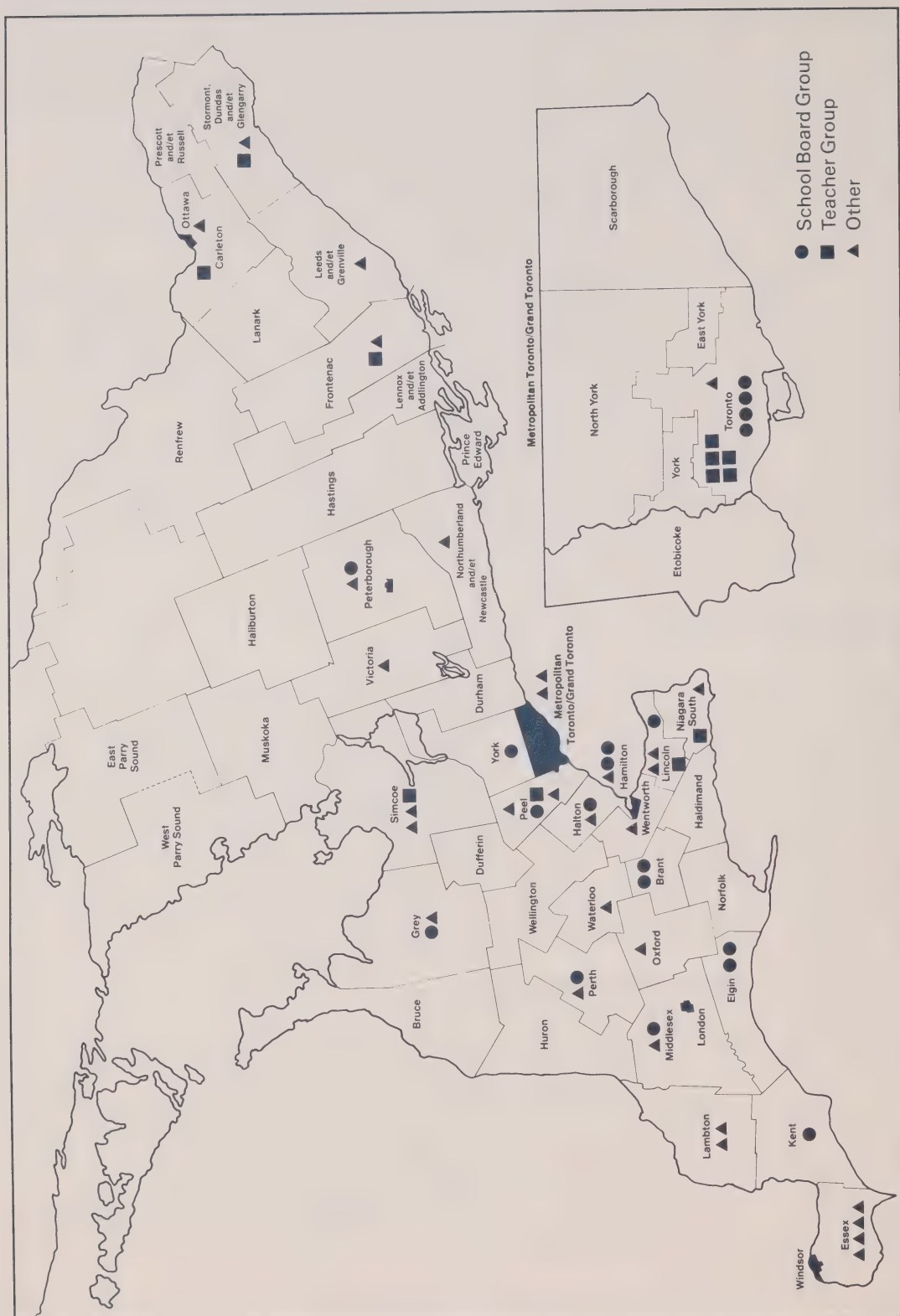
Information Management

Data Collection

Anticipating a demand for information related to the implementation of Ontario's Pay Equity Act, the commission's annual survey of teachers by qualifications and experience was expanded in 1989. Each school board was asked to file, for each branch affiliate represented, a distribution of its teachers by sex, in effect doubling the size of the survey. These data were incorporated into the database for analysis and reporting.

Plans to add a class-size database to the system, announced in last year's annual report, were not realized: the commission was not successful in its attempts to acquire class-size data from the Ministry of Education.

Map 5 Direct-Access Users by Type, 1988-89, Southern Ontario



Technology Acquisition

The commission's computing environment was significantly enhanced during the reporting year. A variety of hardware and software products were purchased, including powerful micro-computers, local area network technology, additional RDBMS productivity tools, and in-house desktop-publishing and graphical-analysis capabilities.

Applications Development

Development of the commission's integrated information-management system progressed through the reporting year. Design of the core application – the Bargaining Process Case Management System – had begun by the end of the reporting year. Based on ORACLE's RDBMS and related productivity tools, the system will streamline the third-party appointment process, provide information on the progress of bargaining for reporting and decision-making, and facilitate research on the Ontario education collective-bargaining experience.

Client Support Services

Direct Access

Enhancements to the direct computer-access facility were implemented in May 1989. Report viewing, storage, and downloading features were added to the custom reporting component of the system, and all direct-access options were extended to clients outside of the Educational Computing Network of Ontario (ECNO).

Clients can send requests for information or assistance via a special help line on the commission's electronic mail system during or outside normal business hours. Also supported are a variety of micro-computer communications packages. A free copy of Kermit software and documentation is provided to clients on request. These enhancements are supported by on-line help facilities and a 60-page user's manual.

Active direct-access accounts numbered 79 at the end of the reporting year (see table 16).

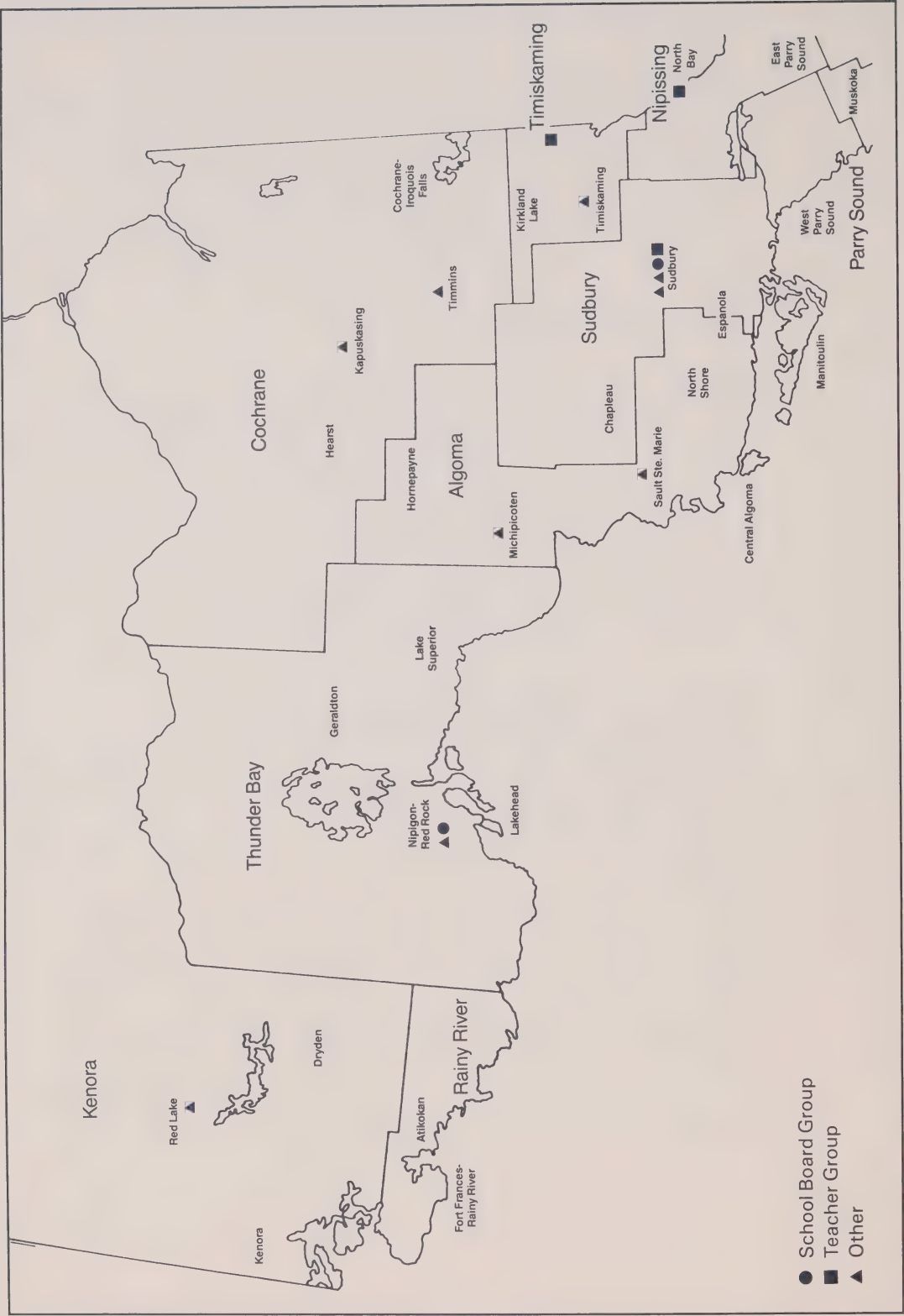
Table 16 Direct-Access Users by Type, 1988-89

Direct-Access Users	Number
School Boards/Provincial Trustees' Associations	38
Branch Affiliates/Provincial Teachers' Associations	23
Third Parties	11
Others	7
Total	79

Personal-computer users account for 60 per cent of the commission's direct-access accounts; the remaining 40 per cent access through terminals of other computer environments.

Seventy-five users are situated throughout Ontario (see maps 5 and 6); three users are located in British Columbia; and one is in Quebec.

**Map 6 Direct-Access Users by Type, 1988-89,
Northern Ontario**



Information Requests

Information Services staff responded to more than 1000 requests for information during the reporting year (see table 17). Approximately one-third of the requests came from each of local school boards and branch affiliates or their respective provincial organization, with third parties (fact-finders, mediators, etc.) and other users comprising the remaining third of the requests.

Table 17 Information Requests by Type of User, 1988–89

Type of User	Number	Per Cent
School Boards/Provincial Trustees' Associations	391	37.6
Branch Affiliates/Provincial Teachers' Associations	321	30.9
Third Parties	135	13.0
Other Users	191	18.4
Total	1038	100.0

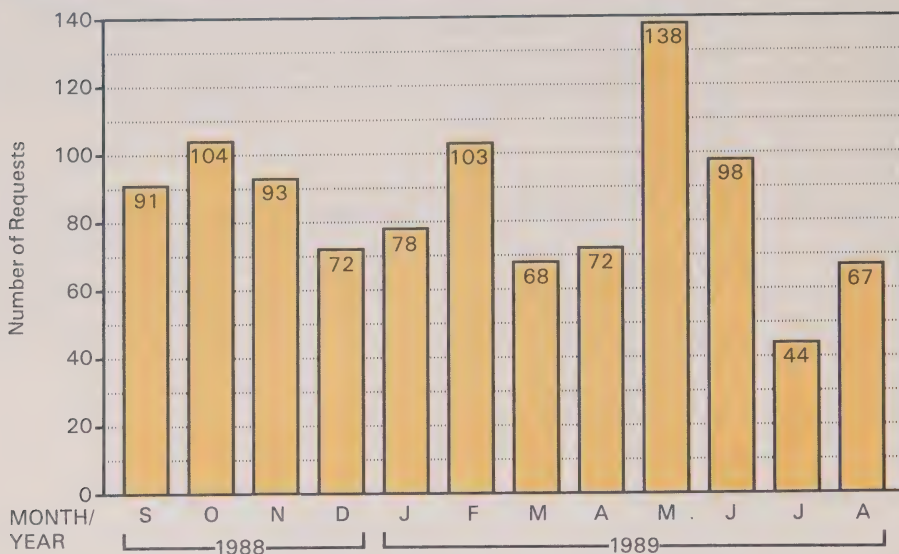
A significant proportion of requests involved customized computer analyses or collective-agreement-clause searches, at times drawing heavily on staff resources (see table 18).

Table 18 Information Requests by Type, 1988–89

Type of Request	Number	Per Cent (of 1038)
Publications	38	3.7
Production Reports	498	48.0
Custom Analyses	306	29.5
Clause Searches	243	23.4
Other	369	35.5

Not surprisingly, the number of requests by month reflected the pattern of collective-bargaining activity during the twelve-month reporting period: development of initial bargaining positions in February; intensive table bargaining prior to the onset of the summer hiatus in negotiations; and fact-finding activity between September and November, after agreement expiry (see figure 3).

Figure 3 Information Requests by Month, 1988-89



TOTAL: 1038

Research

Information Services completed a report, *An Analysis of Preparation Time Provisions, 1989-89*, which represents the first in a re-established series of publications on collective-bargaining issues in teacher/school board bargaining and will be published in 1990.

Workshops/Training

Information Services staff sponsored workshops or made presentations to a variety of groups during 1988-89, including the Ontario Secondary School Teachers' Federation (OSSTF) and the Federation of Women Teachers' Associations of Ontario (FWTAO) provincial conferences for negotiators, the Ontario Association of School Business Officials (OASBO), the Federation of Ontario Provincial Schools Authority Teachers (FOPSAT), and three OSSTF regional workshops. In addition, a number of informal training and demonstration sessions were held at the ERC's offices during the reporting year.

A BIOGRAPHIES OF THE COMMISSIONERS

Chair: Katherine E. Swinton, B.A. – History (University of Alberta), LL.B. (Osgoode Hall Law School, York University), LL.M. (Yale University), Member of the Ontario Bar

Ms. Swinton (Professor, Faculty of Law, University of Toronto) has served as chair of labour-arbitration boards in the private and public sectors and has served as vice-chair of the Ontario Crown Employees' Grievance Settlement Board. She has published extensively in the area of labour relations and has co-edited *Studies in Labour Law*.

Vice-Chair: David Allan Hayes, M.Ed. (University of Toronto), B.A. (McMaster University)

Mr. Hayes is a retired educator. He has served as supervisory officer with the Lincoln County Board of Education, both as a superintendent of curriculum and as an area superintendent.

As a supervisory officer with the Lincoln County Board of Education, he developed and implemented the following programs: a complete evaluation system for all teaching and supervisory personnel, and special programs to assist general-level students and to reduce the dropout rate among secondary school students. Mr. Hayes also developed a complete curriculum design, implementation, and review program for all programs – Kindergarten to Grade 13 – and a co-operative professional-development program for teachers.

Commissioner: John Irwin Zeiler, B.A. (University of Toronto), LL.B. (University of Toronto)

Mr. Zeiler is a partner in the law firm of Leve and Zeiler whose practice includes real estate, corporate, commercial, and estate work. He was the solicitor for the developer who registered the first condominium in Ontario. Mr. Zeiler has taught for the Ontario Real Estate Association, the Appraisal Institute of Canada, and, more recently, in the Department of Administrative Studies at York University where he lectures in Real Property Law and Negotiations.

Commissioner: Trèva Legault Cousineau, B.Sc. (H.Ed.) (University of Ottawa) R.P.Dt.

Ms. Cousineau (co-ordinator of French-Language Services for the Ministry of Community and Social Services, North Central Area) is a member of the board of governors of Cambrian College, Sudbury. She has served as chair and vice-chair of the Timmins District Roman Catholic Separate School Board, member of the Commission on the Financing of Elementary and Secondary Education in Ontario, president of l'Association française des conseils scolaires de l'Ontario, chair of the Ontario School Trustees' Council, and member of the Ministry of Education's Advisory Committee on Special Education and Advisory Council on the Role of the Trustee.

Commissioner: William John McNeil, B.Com. (University of Toronto)

John McNeil has had fifteen years' experience as a teacher and vice-principal in North York and fifteen years' service as a field officer with the Ontario Secondary School Teachers' Federation. His past activities include presidency of District 13, OSSTF; Governor of the Ontario Teachers' Federation; advisory board member on provincial executives of OSSTF; and former trustee of the Ontario Teachers' Insurance Plan. He is currently enrolled in the Master's Degree Program in Industrial Relations at the University of Toronto.

B SANCTION RECORD, 1975-76 to 1988-89

Year	School Board	Total Instructional Days	Total Days Excluding Work-to-Rule
1975-76	Secondary (6):*		
	Central Algoma**	35	35
	Kent County	66.5	13.5
	Kirkland Lake**	44	44
	Metro Toronto**	38	38
	Sault Ste. Marie**	46	13
	Windsor**	27	26
	Year Average	42.7	28.2
		(40.6)***	(32.7)***
1976-77	Secondary (2):		
	Peel	44	0
	Stor., Dundas, Glengarry	24	24
	Year Average	34.0	12.0
	RCSS (1):		
	Durham	9	9
	Year Average	9.0	9.0
1977-78	Secondary (5):		
	Essex	16	16
	Huron	31	31
	Perth	41	0
	Renfrew**	73	44
	Wentworth	49	16
	Year Average	42.0	21.4
	RCSS (1):		
	Essex	34	34
	Year Average	34.0	34.0
1978-79	Secondary (3):		
	Haldimand	36	36
	Kirkland Lake	30	26
	York County	5	2
	Year Average	23.7	21.3
1979-80	Elementary (2):		
	Brant	22	22
	Peel	14	13
	Year Average	18.0	17.5
	Secondary (3):		
	Lambton	39	39
	North York	40	0
	Sudbury**	56	56
	Year Average	45.0	31.7
	RCSS (2):		
	Fontenac	14	14
	Nipissing	18	18
	Year Average	16.0	16.0

* 11 sanctions if Metro = 6

** An advisement was made pursuant to clause 60(1)(h)

*** Average if Metro = 6

Year	School Board	Total Instructional Days	Total Days Excluding Work-to-Rule
1980-81	Secondary (3):*		
	Bruce	40	38
	Leeds and Grenville	30	30
	Norfolk	48	47
	Year Average	39.3	38.3
	RCSS (1):		
	Essex	9	9
	Year Average	9.0	9.0
1981-82	Secondary (2):		
	Leeds and Grenville	0	0
	West Parry Sound	51	51
	Year Average	25.5	25.5
	RCSS (2):		
	Carleton (OECTA)	19	19
	Carleton (AEEFO)	11	11
	Year Average	15.0	15.0
1982-83	Secondary (1):		
	Oxford County	7	1
	Year Average	7.0	1.0
1983-84	(0)	0	0
1984-85	Secondary (2):		
	Hamilton (OSSTF)	39	29
	Muskoka	30	30
	Year Average	34.5	29.5
	RCSS (3):		
	Stor., Dundas, Glengarry (AEEFO)	9	9
	Sudbury	21	21
	York Region	22	0
	Year Average	17.3	15.0
1985-86	Secondary (3):		
	Wellington (OSSTF)**	50	50
	Grey (OSSTF)	42	42
	Lennox & Addington (OSSTF)	11	8
	Year Average	34.3	33.3
	RCSS (1):		
	Metro	5	5
	Year Average	5.0	5.0
1986-87	Secondary (1):		
	Dryden	33	33
	Year Average	33.0	33.0
	RCSS (5):		
	Frontenac, Lennox &	16 (elementary)	—
	Addington (AEEFO, OECTA)	17 (secondary)	—
	North Shore	23	23
	Sault Ste. Marie (AEEFO, OECTA)	23	23
	Windsor (AEEFO, OECTA)	14	14
	York Region (AEEFO, OECTA)	22	—
	Year Average	19.2	20.0

* 11 sanctions if Metro = 6

** An advisement was made pursuant to clause 60(1)(h)

Year	School Board	Total Instructional Days	Total Days Excluding Work-to-Rule
1987-88	Elementary (1):		
	Metro Toronto****	18	18
	Year Average	18.0	18.0
	RCSS (2):		
	Hearst	6	6
	Lakehead	11	11
	Year Average	8.5	8.5
1988-89	Secondary (1):		
	Durham	1	1
	Year Average	1.0	1.0
	RCSS (1):		
	Kirkland Lake	41	41
	Year Average	41.0	41.0

**** 7 sanctions if Metro = 7

C AN EXCERPT FROM THE DECISION
OF THE SUPREME COURT OF ONTARIO,
DECEMBER 20, 1988

In making its decision in this matter, the Commission was acting under s.60(1)(f) of the *School Boards and Teachers Collective Negotiations Act* (the “*Negotiations Act*”). It would appear from s.80 of the *Negotiations Act* that, when the Commission is acting under that subsection, its jurisdiction has been treated by the legislature in a different way than when it is discharging its obligations under the other subsections of s.60.

When the Commission proceeds under s.60(1)(f) to determine whether a party is negotiating in good faith, the *Statutory Powers Procedure Act* applies, whereas that Act does not apply to any other proceedings before the Commission because of s.80(2).

The *Negotiations Act* provides that certain matters relating to relationships between Boards of Education and their teachers must be decided by the Ontario Labour Relations Board, but questions under s.60(1)(f) are matters for the Commission. When dealing with those matters, the Commission is given the same protection from interference by decisions of the Court as is accorded to the *Ontario Labour Relations Board*. Section 72 of the *Negotiations Act* is a sweeping privative clause.

The result, in my view, is that we must not interfere with the decision of the Commission, unless it can be shown that the Commission made a jurisdictional error.

Mr. Stewart, in his argument, made reference to a number of cases that speak of the duty of this Court and other Courts hearing applications for judicial review to accord “curial deference” to the tribunal making the decision. One of these cases was the decision of the Court of Appeal in the *Broadway Manor* case (*Re Service Employees, etc.* [1984], 48 O.R. [2d] 225), where the Court quoted with approval the decision in this Court of Galligan J. Galligan J. said in referring to curial deference that it ought only to be extended to a tribunal when it is interpreting its Constitution or home statute. He then said (at p. 238):

“By that I mean curial deference need only be granted to the Labour Relations Board when it interprets the *Labour Relations Act* and to the Education Relations Commission when it interprets the *Boards and Teachers Negotiations Act*”.

I do not think that statement by Galligan J. should be applied literally in such a way as to be in conflict with the statements in other cases that curial deference should apply whenever the tribunal is dealing with something that clearly lies within the field of its expertise. It may be that there are some parts of the *Education Act* which do not fall within the field of expertise of the Education Relations Commission, but the sections of that statute that are clearly involved in determining questions about bargaining in good faith under s.60(1)(f) of the *Negotiations Act* are provisions which, when interpreted by the Commission, should receive curial deference.

I am not sure that the result of the authorities as to curial deference is exactly the same as the result of the privative clause. It is unnecessary to decide that in this case. Here, in my view, not only should the decision of the Commission be accorded curial deference, because it relates to a matter that, to use the expression in *McLeod v. Egan* (1974) 46 D.L.R. (3d) 150, is a “projection of the collective bargaining relations of the parties”, but because it is protected by a sweeping privative clause.

It may well be that the decision of the Commission contains statements that appear to be incorrect when judged by lawyers in accordance with legal principles. Be that as it may, we are very mindful of the provisions of s.2 of the *Negotiations Act* which declares that the purpose of this Act is the furthering of harmonious relations between boards and teachers by providing for the making and renewing of agreements and by providing for the relations between boards and teachers in respect of agreements.

Whatever may be the legal correctness of the process by which the Commission arrived at its decision, we venture to say, with respect, that the decision was eminently reasonable in its disposition of the matter that came before the Commission. The interpretation which it placed on the relevant provisions of the *Negotiations Act* and the *Education Act* was not patently unreasonable, in our judgement.

D STATEMENT OF EXPENDITURES
APRIL 1, 1988, to MARCH 31, 1989

Categories	Budget Allocation \$	Actual Expenditures \$
Salaries	639 100	661 441
Employee Benefits	86 700	76 655
Transportation & Communications	252 400	174 379
Services	322 800	389 154
Supplies & Equipment	101 900	99 329
Total Budget Allocation	1 402 900	
Total Actual Expenditures		1 400 958

